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**State of Vermont**  
**Vermont Department of Education**  
120 State Street  
Montpelier, VT 05620-2501

## **MEMORANDUM**

TO: Superintendents; Middle and High School Principals  
CC: VSBA, VSA, VPA, and VT-NEA  
SUBJ: **Act 150 (Public High School Choice) Memo**  
DATE: August 6, 2008

This is the department's annual communication about Act 150 (Public High School Choice) to inform you of relevant policy and/or legal issues, to enlist your continued participation in our data collection, and to request, of those who have not, that you send us copies of agreements covering school choice regions.

### **2008 Legislative Change**

This year, as part of the Act 154 law reducing mandates in public education, Sec. 3(b) of Act 150 was repealed. This section required the commissioner to collect information from schools (15 topics were listed) and report to the Legislature every January on the implementation of public high school choice.

There has been no change to the substantive requirements of Act 150, which remain fully in effect.

### **January 2008 Report on Act 150**

The January 2008 Report on Act 150 can be found at <http://education.vermont.gov/new/html/laws/act150.html>

### **School Choice Information**

The legislative change means that the department will no longer conduct the formal Act 150 data collection.

Given that the law remains in effect, however, it will be useful to collect school choice information related to Act 150 with as little inconvenience to school staff as possible.

The department will continue to ask schools to indicate which students are enrolled in school as Act 150 transfers in the student census. We will not collect information on students who apply to transfer or enroll according to an Act 150 agreement (the lottery data). **The Act 150 data forms were delivered to schools prior to the legislative change and can be disregarded.**

To ensure that choice is made available to students who wish to take part, schools must observe Act 150 requirements related to the number of students allowed to transfer from schools (as reflected in the [attached January 2005 memo](#)) and the capacity of schools to accept students.

## **Regional Agreements**

The department will still collect, on an annual basis, the composition of school choice regions, and receive for review all school choice agreements.

We have received copies of seven agreements covering 44 schools from Winooski Valley (18 schools), Southeast Region (11), Rutland (7), Addison (3), Concord and Danville, Enosburg and Richford, and Enosburg and Missisquoi.

If your district has not yet sent copies of agreements in which you participate, please do so no later than August 15<sup>th</sup> and send them to:

Peter Thoms, Vermont Department of Education, 120 State Street, Montpelier, VT 05620-2501; or e-mail [peter.thoms@state.vt.us](mailto:peter.thoms@state.vt.us)

We appreciate your continued efforts to implement Act 150.

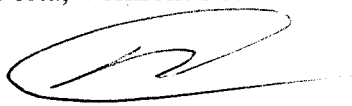


**STATE OF VERMONT**  
**DEPARTMENT OF EDUCATION**  
120 State Street  
Montpelier, VT 05620-2501

**MEMORANDUM**

TO: Superintendents

CC: State Board of Education; Jeff Francis, VSA; John Nelson, VSBA; Ray Pellegrini, VPA; Joel Cook, Vermont-NEA; Angelo Dorta, Vermont-NEA

FROM: Richard H. Cate, Commissioner 

DATE: January 5, 2005

RE: Interpretation of Act 150 (Public High School Choice) Provision Regarding Numbers of Students Allowed to Transfer in Any Year

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Recently I have been asked to interpret Sec. 2(h) of Act 150 of the 2000 General Assembly which requires high schools to allow certain numbers of students to transfer to other high schools within their choice region. That provision reads in pertinent part:

(h)...Following school year 2002-2003, a high school board may refuse to allow more than five percent of the students enrolled or 10 students, whichever is fewer, to transfer from one school to another under this section in one year.

The question for interpretation is whether students who have already transferred in a previous year may be counted by a sending high school in the current school year in order to reach the five- percent or 10- student cap. I understand that some interpret this provision to allow counting students who have already transferred (e.g. if five percent of the enrolled students, or 10 students, transferred out the year before and none graduated or otherwise left the receiving schools, no new transfers would be permitted in the current year). I understand others interpret this provision to the effect that those who have transferred in prior years are enrolled elsewhere and are therefore not to be counted when calculating the cap (e.g. if five percent of the enrolled students or, 10 students, transferred out the year before, even though none graduated or otherwise left the receiving schools, five percent of the reduced number of enrolled students, 10 new students, would be permitted to transfer in the current year).

If the law is interpreted to mean each year a new 5 percent or 10 students could transfer out, over four years, a small school of 200 grade 9-12 students could lose 40 students or an entire fifth of its student body. That seems out of keeping with the spirit of Act 150 given the desire to cap the number of transferring students to protect small schools. On the other hand, if once the cap had been reached, no further students could transfer out, many schools could see no movement of

students at all after the first year and that would be out of keeping with the experimental nature of Act 150.

Certainly this provision could have been written with greater precision and it is easy to see why there has been more than one interpretation. I conclude, however, that a third interpretation is the correct one. Based upon the overall context of the law and my understanding of its legislative history, as well as the policy reasons behind it, I conclude that Act 150's annual cap (5 percent or 10 students whichever is fewer) is to be calculated based upon the school's grades 9-12 enrollment for the previous year. The calculation is cumulative from year to year, but capped at the statutory limit so that the combination of a school's students from previous years who will continue to exercise choice under Act 150 and the new students who may transfer out of that school in the year in question cannot exceed 5 percent of the school's grades 9-12 enrollment in the previous year. Here is a chart illustrating that concept:

**Application of the 5 percent or 10 student threshold.** The following assumes enrollment remains constant and also assumes maximum usage of the provisions of Act 150:

Prior Year Grades 9-12 enrollment	Combined number of transfers in year 1	Combined number of transfers in year 2	Combined number of transfers in year 3	Combined number of transfers in year 4	Combined number of transfers in year 5
100 students	5	5	5	5	5
200 students	10	10	10	10	10
300 students	10	15	15	15	15
500 students	10	20	25	25	25
1000 students	10	20	30	40	50

This approach meets the policy goals of Act 150 in that it encourages experimentation with public school choice while at the same time protecting small schools. I understand that several high school regions or districts may have been operating under the more limited interpretation of Sec. 2(h). Given the statutory ambiguity, this is understandable. I have only recently had this question addressed to me and I do not wish to upset any arrangements that have been made for the current school year. However, beginning in the 2005-2006 school year, I expect that the broader interpretation of Sec. 2(h), as indicated in the above, will be implemented.

Another related point should be mentioned. Some have enquired as to whether the above-discussed cap also applies to a receiving school under Act 150. My interpretation is that the local school board decides the capacity of the receiving school to accept nonresident students under Act 150.

I hope this clarification is helpful. Please let me know if you have any questions.